

SUMMARY
Virginia Housing Commission
Continuing Care Retirement Communities Sub-Workgroup
Senate Room A, General Assembly Building
November 30, 2012
10:00 AM

I. Welcome and Call to Order

- **Senator George Barker**, *chair* called the meeting to order at 10:00 AM;
- In addition to the invited speakers the following workgroup members were in attendance:
 - **Workgroup members:** Senator George L. Barker, Chair; Senator Mamie Locke, VHC Vice Chair; Bill Axselle, *Erickson Retirement Community*; Mary Lynne Bailey, *Virginia Health Care Association*; Al daCosta, *Virginia Baptist Homes Foundation Resident*; Chip Dicks, *Realtor Association*; Daryl Hepler, *State Corporation Commission*, Bureau of Insurance; Ron Herring, *Glebe Resident*; George High, *Westminster Resident*; H. Donald Nelson, *Windsor Meade Resident*; Dana Parsons, *Virginia Association Nonprofit Homes for the Aging*; Jim Rothrock, *Dept. of Rehabilitation Services*; A. Prescott Rowe, *Cedarfield Resident*; Peter T. Straub, *Greenspring Retirement Community*; Pia Trigiani, *Common Interest Communities Management Fund*; and Amy Marschean, *Department of Rehabilitation Services*
 - **Staff:** Elizabeth Palen, *VHC Director*

II. Continuing Care Retirement Communities Overview

- **Dr. Katherine Pearson**, *Professor of Law, The Dickenson School of Law, Pennsylvania State University*, gave a presentation on Continuing Care Retirement Communities that has been made available under the “Materials” section.
- **Mr. H. Donald Nelson**, *Windsor Meade Resident*: We have seen a transition between life-care and entrance fee plus fee for service. Do you see either opportunities or conflicts that developed because of that?
 - **Dr. Pearson:** I think the biggest problem is of definition. For a time, we defined facilities as either type a, type b, or type c facilities. In reality, there are multiple types in individual facilities. What you are increasingly going to have are additional fees because the entrance fee was not viewed as adequate for whatever the risk is going to be. That is going to create tension. It is definitely a trend, and there is even going to be the potential

for differences of opinion among residents about how they are being treated.

- About 80% of the CCRC market is non-profit, but the core of that non-profit is not the traditional mission-driven charitable, non-profit organization. It is a hybrid, where it is often a for-profit developer or a for-profit manager combined with a not-for-profit entity, and the not-for-profit entity is not financially at risk if a property is less than successful.
- The risk is limited to the dollars invested in the project, not into the greater financial wherewithal of the organization. I think that is a change in the marketplace, and it is one that creates greater risk for residents.
- **Ms. Dana Parsons:** Please comment on the states that have a mandate for a resident to serve on the governing board. Could you also comment on those states relating to the scope of practice the CCRCs who have residents serving on committees and councils that work directly with the board as well as those communities having an open door policy for residents to speak with the governing boards and administrations?
 - **Dr. Pearson:** Many facilities allow voting members without legislation requiring it. In some of the states that allow it rather than mandate it, they are confused about that role, and they try to have the only person that gets to know anything about the financial decision-making being that resident, and then that resident member is sworn to secrecy. Well that just heightens the tensions! So you've got to be willing to still be financially transparent about big changes with the whole resident group and with all of your residents, that two-pronged approach that New Jersey takes.
 - Residents' presence on key committees is very important. They started off without an understanding of how the process works, and as they recognized that residents really want the success of the operation and are willing to be educated about what that means. Some residents come with a great deal of financial sophistication already. The facilities that I'm hearing have had the best success are the ones that have integrated the residents actively in decision-making.
- **Sen. Barker:** We in Virginia have a requirement that there be resident councils if the residents want to do that as part of the process. We also have the majority of our facilities that do have resident members on their board. So we have it on a voluntary basis.
- **Mr. George High:** I just wanted to amplify one of your many helpful remarks, and that is relationships between residents and the local management organization. In Virginia, we in VACRA, the Residents' State Organization, have wonderful relationships with the national management organization. At the last meeting they had in Denver just about a month ago there was even a session

where residents led the discussion, were there to answer questions, and it was heavily attended by management people talking about resident management relationships.

- In Virginia, we haven't been so successful. A number of years ago VACRA did attend an occasional VANHA meeting, and people appreciated that. We haven't done that for years. We haven't been invited back to it. In fact, I'm afraid we've had a rather hostile relationship organization to organization there has been resistance from VANHA .
- It really is disappointing because we have this general interest. We're not looking for conflict. We want to work together, but we want our views to get into the picture to amplify what governing boards are trying to do. So there is still that hurdle to go over in Virginia, and it's a disappointing one, because we want to be cooperative.
- **Ms. Parsons:** I don't believe that the interactions with the association are at issue here at the moment, but I do feel the need to respond. Our association has been very open to coming and speaking with the VACRA association in Virginia and working with them directly, and we've always been pleased for the opportunity to speak at those events. We were very pleased at our event in Denver that we had a number of residents come and attend our event.
- Just in response to both of you, I hear a little breakdown in communications right there, because I hear Mr. High saying he wants to be heard, and I you saying that you want to speak.
- **Mr. Axelle:** When we had our September 5th meeting, the State Corporation Commission, which provides us with a degree of oversight here in Virginia, advised us that we have fifty-five CCRCs in Virginia, and to their knowledge, no CCRC resident has ever had their contract effected because of any financial instability.
 - **Dr. Pearson:** I don't know specifically what Virginia's history is, but I have heard this argument before. When I first started looking at CCRCs in Pennsylvania, the response was always, "There has never been a bankruptcy in Pennsylvania. We're managing just fine without new regulations." And then the bankruptcies of the Covenant Hills and Frank Lee Erickson hit, and so they couldn't use that argument anymore. Then the argument was, "There has never been a facility that lost their contract rights" (as a result of financial instability.)
 - There has always been a buyer, as was fortunate in the Erickson homes. But then we had Covenant Hills, where the residents lost \$25,000,000. We can't keep planning based on what didn't happen, when we know that residents are being asked to pay increasing percentages, and the rate of

increase of the monthly fees is going up, and that's consistent with the contract, but it's not at rates they were necessarily expecting.

- What is frightening residents is how are these large lump sum fees being used? If they're a type a contract, and the fees are going up, why is it that that type a contract amount is not being adequately accounted for in an actuarial sense or the future health care needs. If it's a refundable fee, why aren't, from an accounting standpoint, those funds being escrowed in such a way that provides refundability, so that residents' monthly fees don't have to go up to support refundability?
- Nobody likes the idea of a Ponzi scheme, and I don't think CCRCs are in any way a Ponzi scheme, let me make that very clear, but if you don't have a system for repayment or use of these large fees, and you're only developing, and you're only relying on the next resident's large entrance fee as the means for refunding somebody, then that puts you closer to Ponzi scheme-like effect than I think residents are comfortable with. That's the safest way I can describe it.

- **Mr. Axselle:** You indicated that you are not familiar with the experience here in Virginia, so I assume you then accept what the State Corporation Commission told us in September.

- **Dr. Pearson:** What I've been told by individual residents is that they feel that their fees are going up at rates that are inconsistent with what their expectations were. Do the contracts allow you to do that? Absolutely.

- **Mr. Axselle:** The SCC said in September that no CCRC resident in Virginia has ever had their contract voided because of any financial instability. Do you accept that?

- **Dr. Pearson:** I'm not aware of any. That's correct.

- **Mr. Axselle:** That would include the two Erickson facilities here in Virginia.

- **Dr. Pearson:** That is correct as far as I know.

- **Mr. Axselle:** Just for the record, Erickson did have difficulties. They did come through it. They are better for it. Right now one facility that Erickson owns, called the Green Sphinx Village, has a 99.4% occupancy, a two year waiting list, and the not-for-profit has \$50,000,000 cash balance.

- **Dr. Pearson:** It sounds like Mr. Davis is doing a great job. The other thing is, unlike Mr. Erickson, Mr. Davis is not doing this greatly expanded, highly leveraged growth plan with other facilities down the line. You're doing stability planning as opposed to growth planning, and it sounds like it is working.

- **Mr. Axselle:** I would concur with that.

- **Sen. Barker:** Just to follow up on that, I think our experience with the two Erickson facilities here is that the facilities themselves were actually in strong

financial shape. It was at the corporate level at Erickson that there were the issues. From the perspective of a legislator representing one of those as well as the residents, once we looked into things it was very quickly apparent that the structure of the individual organization was pretty good.

- **Mr. Straub:** Yes, that's exactly correct. With regards to Greenspring, we had bought facilities prior to the bankruptcy from Mr. Erickson, from the corporation. So the bankruptcy did not affect us at all.
 - I was interested in your comparison of the conversation and comments of Ms. Pearson and Mr. Will, because on a macro level, that's the one complaint that I hear from almost all residents. We don't get consulted enough.
 - We at Greenspring had a speaker from Leading Edge, and he went through a list of things to be concerned about in the future, and the difference in the generations, and so on, and his discussion of solutions invariably included in each case, "Consult with the residents." This is one issue that is not subject to legislative control. The solution to such problems requires a two way street.
- **Mr. Ryan Herring:** Dr. Pearson, from your experience and your research, could you please comment on the concern that we don't have benchmarks as we monitor CCRC operations. So that before bankruptcy or reorganization or whatever you want to call it would suggest that we are having financial problems. Are there some benchmarks that your experience could suggest that can be used to get at that before the eggs break in the basket?
 - **Dr. Pearson:** These benchmarks exist. The industry has them. One of them is published annually by Financial Ratios and Trend Analysis by KAARF and CCAC-accredited organizations. There is a 2012 publication that is a joint publication between KAARF and CCAC and Zigler
 - It talks about this problem of having comparability when you are using different standards for entrance fee models. I think the industry is finally beginning to come to terms with this lack of comparability and the need for better benchmarking standards, and that's part of the reason why the FASBE has adopted a new standard. That's in large part because residents have said this has got to be done better, so we don't have to live from economic crisis to economic crisis without better security.
- **Mr. Al daCosta:** I would like to hear your thoughts on how you envision mandating any legislation at all that would fit the diversity that exists in the CCRCs.
 - **Dr. Pearson:** Accountants, actuaries and financial advisors that there is a common issue for all CCRCs, and that's, how account for the large fees that are paid in advance, and whether it's going to be assessed as devoted

- to health care costs (type a model) I think that there is growing recognition that you actually have to account for it that way, and treat it appropriately.
- On the refundable fees, I think there's been a level of confusion for a number of years. Many people don't realize that that really is a fee for service model, because that is a refundable fee, and you have to account for how you are going to repay it.
 - There is a common interest, except for equity model, in how you are going to handle those upfront fees. How are you going to account for them? You may call it an escrow or a reserve. You may have an actuarial standard that's tied to healthcare that's tied to type a contracts, and you may have a life standard actuarial figure that you use to account for an escrow sum for the refundable fees.
- **Mr. Rowe:** Could you elaborate a little bit on the effectiveness of residents being on committees versus there being a single representative on multiple boards. It seems to me the interchange could be greater if residents could be on various committees.
 - **Dr. Pearson:** You can't substitute a voting member on the board with dialog with the residents. Having them be a part of the financial decision-making mechanism is very appropriate.
 - Many people have used that voting member as the wedge to get on those committees, but certainly it can and should be done without that, and that's really a question of understanding of well-run facilities that that is part of how you achieve stronger communities through trust.
 - **Mr. Rowe:** I agree and I think that often overlooked in our communities is the wealth of knowledge and experience of the residents sometimes exceeds that of the management.
 - **Dr. Pearson:** I think that's true, and I'm also going to speak on behalf of management. We need to recognize that sometimes residents don't stay up-to-date. It's a challenging market, and just because you are a captain of industry in one field may still mean that you are going to have challenges if you are attempting to direct the management of a CCRC industry.
 - **Mr. Straub:** I have two points. First, the perspective of age is a significant differing factor. A professional in middle age may not be able to grasp the needs or have the best interest of the elderly. Second, people at GAO, reviewed your documents and presented the final document for the Senate. She was unable to be here today, but she has been interpreting what you have said right along. I am glad to get your side because it is more accurate.
 - **Dr. Pearson:** When I spoke before the Senate for a National Bill of Rights for residents, I was very cautious. I was very willing to allow the residents,

industry, and legislators to come together as what it might be. I was also concerned, and I did not want to do a reaction to the crisis in 2010.

- I have heard from more residents in the past twelve months that I have heard in the past six years. This tells me that there is a continued risk factor that shared governance might help to lessen.

- **Mr. George High:** Very recently Westminster has had a number of resident problems. Our governing board decided months ago, that they needed to go to designated people if they need to deal with us. To go to them, to let them know that the communities need support, and to ask for a donation. Over the last two months, a number of our residents discovered that, and some were angry, annoyed, or surprised, because they thought it was totally inappropriate. We finally had a meeting yesterday among our residents, and this all was brought to a head.
 - The head of our resident support committee for all of our organizations explained that this is a very common practice in most CCRC's, that they need to go to these legal representatives to see if they can get some money for them, because there are places to go for money.
 - We, as residents, aren't supporting enough, and particularly, if we're looking for these people who lose their moneys. Most of us agreed with that. The surprise was that this came as surprise to virtually all our residents because nobody had told us that they were going to legal representatives, and that's where the hassle came from. Communication is vital.
- **Sen. Barker:** We can all agree on that one.
- **Mr. Herring:** From the experiences that many of us talk about, that the synergy in CCR life is shifting with an intense need to engage residents. That synergy relates to transparency and accountability. Any of us that ignore that and work to improve it, do that at our mutual peril. What we've experienced in the economy and in terms of management and governance issues that CCRC's face has driven this synergy to a new a new level, and ignoring it is to ignore it at our mutual peril.
- **Dr. Pearson:** What you just said is that the CCRC's have said that residents are "the best marketing tool". That is always going to be true.

III. Similarities and Differences between Common Interest Communities and Continuing Care Retirement Communities

- **Pia Trigiani, *Common Interest Communities Management Fund*:** There are some similarities between (CCRCs and CICs), but there are lots of differences, such as the governance aspect. The Community Associations Institute, in the late '90s,

adopted rights and responsibilities to try and address these issues of resident and owner input visa vie leadership and management.

- There are basically four different kinds of community associations in VA: Condominiums, property owners' associations, timeshare developments, and real-estate cooperatives. These are all different kinds of development that are the brainchild of creative developers. In Virginia, condominiums, cooperatives, and timeshares are heavily regulated, with property owners associations to a lesser extent. As the senator has requested, I'm going to focus on condominiums.
- Condominiums are statutory fiction. What that means is that they don't exist but for the statutory scheme that creates them. Condominiums are owned property, which is probably the biggest distinction. When you purchase a condominium, (and by the way, there are some continuing care communities that are condominiums) you buy a few simple title to you unit. You own however that unit is defined plus an undivided interest in the common elements.
- The developer role is only temporary. Their goal is to put in place a governance structure and give it to the owners as soon as they can. They are required under the statutes that create condominiums, to record governing documents, called condominium instruments: a declaration, bylaws, and description of the property. They must create and define what is unit, and what the common element is.
- The big thing the developer must do is to create an association that has powers which are detailed in the condominium instruments. Those powers are extraordinary, because what you do as a unit owner in a condominium is seed that authority to an executive organ, a board of directors, that makes decisions on behalf of all the owners with respect to the budget, enforcing rules, bringing and defending legal action, etc.
- In Virginia, condominiums are typically not incorporated to condominium owners associations. They are unincorporated associations. That is not true on the property owners' association side. They must be incorporated because they own the common areas. In a condominium, you give up rights. There is somebody else who makes the decisions.
- Associations are all different and have different personalities. The challenge is how you create a governance structure. There are some, which we call benevolent dictatorships, and others, which have elaborate committee structures. This is also used as a leadership development tool to get you to the board. So the governance structure is based on the recorded condominium instruments in the bylaws, and those authorities are very carefully spelled out.

- VA has historically taken the position on regulation of these communities that our citizenry is very smart, but we want to make them smarter. In 1962 when the horizontal property act went into place, the real estate commission inspected properties and prepared a property report. In 1974, our second-generation statute went into place, which has 4 articles: one talks about general things, one about what a developer can and cannot do, a third article about operation, and a fourth about regulations.
- When that 4th article was put into place, in order for developers to get some benefits and flexibility in their ability to develop a piece of property, they gave up some regulatory rights. The real estate board, at that time, created regulations, and there was a requirement for the delivery of a public offering statement
- In the public offering statement, the developer goes in to detail to describe what they're buying, including what the governance structure is going to be. The goal is that you give the information to the purchaser and they make the decision. On the initial sale of a residential condominium, there's a disclosure requirement, which is also true of time-shares and cooperatives. There is this public offering statement that must be delivered to tell people what they are buying, but this is not the case for property owners' associations.
- (The scheme of registration by the Real Estate Board, now the Common Interest Community Board, for condominiums, timesharing, and cooperatives, which is kind of a self-disclosure on initial sale.) The developer still has to give what's called an association disclosure packet, but the association prepares that document. Whether or not you can fly the flag or put a sign in your yard are all disclosures you receive when you buy into one of these common interest communities.
- On the governance side, again, it is completely driven by the documents and the volunteers. Now, we do have professional management, not in all instances, but some. In fact, in 1978, they began regulating community association management, so there is a regulatory scheme for the managers. The goal is to get an educated manager, and to not tell them how to do it, but help them do it. Virginia's regulatory scheme tries to help people give them the tools to what they need to do.
- The governance structure, again driven by the recorded documents, and self-directed by those who live in the community. The developer in transition does work with the community to try to set up processes and procedures for committees. Again, some have elaborate structures, while some do not. These are not regulated by the state, except that our general

assembly believes that there should be disclosure, and requires that associations operate in the open.

- In fact, while they're not governments, they have some characteristics of a government. Virginia has applied and put into the statutes that govern these common interest communities freedom-of-information-like provisions on access to books and records, and open meetings.
 - While associations are required to give access to books and records, there are limits. For example, an individual's personal information is protected. Attorney-client privileged information, pending contracts under negotiation, personnel information, will all be excluded.
 - There are requirements for open governance. Participation though, is very community specific, and there are no requirements in the law for committees at all. There is a requirement that there be a Board of Directors, and that they meet periodically in the open.
 - Good governance is participatory, and that is the model that community associations institute recommends. If you have rules and you seek compliance with rules, open governance is a good thing. It's not always participatory, because the Board of Directors ultimately makes the decision.
 - I agree with you about managing conflicts of interest. Just because you have an interest doesn't necessarily mean you have a conflict. And in fact, you can argue that every board member in a community association has a conflict because he/she owns a piece of property in that community. While they are alike, they are very different, and the biggest difference is I think in the ownership issue. It's a regulatory scheme that's worked, but it is again, consistent with the Virginia way, which is to allow business to do its business, to allow developers to conduct themselves with a general framework. We like to say it permissive, not proscriptive. It's not into the detail and minutia.
- **Del. Barker:** What does the code require in the composition of the boards of condominiums?
 - **Ms. Trigiani:** That is completely driven by the documents that create the association, and is typically dependent on the size of the community.
 - **Del. Barker:** Have there been instances of condominiums going bankrupt or having financial problems? How do those get resolved given?
 - **Ms. Trigiani:** We have not seen many situations where once the developer is gone, the associations get into financial trouble, although there is a growing. This is a result of internal litigation. Because associations' governing documents do not put limits on the authority to assess, the board completely often makes those decisions.

- **Ms. Parsons:** Because of the uniqueness of the condominiums association, would you say you not mandate structure of governing board?
 - **Ms. Trigiani:** Yes, these condominiums are very different and very dependent upon the services, amenities, architectural structure, common area, etc. The answer to your question is no, there is no statute that describes who must be on the board.
- **Mr. Straub:** In CCRC's, we buy an unlimited right to use space, which is a difficult concept to define. Is that something that could be transformed by the legislature into a genuine property right?
 - **Ms. Trigiani:** That is what they have done with time-shares, so ,yes, I believe so. There are probably examples where the General Assembly has defined something as real estate.
- **Mr. Axelle:** The Virginia Constitution, under your interpretation, would prohibit changing existing code on the subject of contract. Could the General Assembly establish an entirely new concept if they chose to do so?
 - **Ms. Trigiani:** Going forward with a completely new regulatory scheme, the General Assembly could put in place a system that in some ways affects it, but you would have to evaluate each community separately, as they are so different. However, I do not think you could go back and affect that contract.
- **Del. Barker:** There are clearly some things that can be done, but we would have to look into what is permissible and what is problematic.

IV. Continuing Care Retirement Communities Industry Speakers

- **Ms. Sandee Levin, VANHA President:** A Continuing Care Retirement Community is a combination of residential and care options that is owned and operated by private companies and staffed to provide a continuing of care for residence. The distinct difference is that a condominium is owned by a residence; and with some limited exceptions, a CCRC is owned by private companies and residents pay monthly fees.
 - These residents make a commitment to live for the remainder of their lives in these CRCC's. Residents are encouraged to have their attorneys and family members involved in the decision making process. (VAN house) encourages the resident input and involvement on governing boards of CCRC in accordance with community policies, and there are many communities in which there is a resident on the board with voting rights. In Virginia, approximately 60% of CRCC's have residents on the board, some voting and some non-voting. From a survey, we found that there are

an average of 90 meeting a year for CCRC that gives the residents and staff the opportunities for open communication.

- Because CCRC have varying personalities, we feel that the General Assembly should not dictate how the administration interacts and communicates with the residents, in that there are so many different types and so many different residents.

- **Mr. Bob Gerndt, Executive Director; The Glebe:** I was going to speak to the issue of communications and commitments. The previous speaker mentioned the survey done and indicated that on average there were 90 opportunities for meetings and comments back and forth. In 2010, there were over 3,000 meetings within our fifty communities between management and residents. In 2011, there were 4,000 meetings. Granted, these meeting vary greatly in length and frequency. The numbers indicate that there is a very clear intention of the CCRC's to maintain communications.

- Most of the CCRC's are mission driven service organizations, and we cannot meet our mission without effective communication. There is a wide variety of the CCRC's, each with its own culture. There are also a wide variety of residents, with different needs and desires.
- The economics of the CCRC's do not define the relationship between the residents and CCRC's. There is an ethical commitment to the residents, which includes meeting their needs; and we cannot accomplish this without open communications. CCRC's go through a great deal of effort every year to raise money to provide for the residents. In most life-care contracts, if a resident runs out of funds to no fault of their own, the CCRC will provide services for the rest of their lives for no charge or whatever they can afford. This is a clear indicator of commitment our residents.
- They also help to explain that even with the economic downturn; there have been very few issues with CCRC's. They have met the financial, contractual, and ethical commitments to the residents. The examples of problems with CCRC's, have raised question of what the financial situation of the communities are.
- Regarding financial information, a previous speaker had mentioned the structure of CCRCs and how the financial arrangements are getting more complicated. Careful Reading of the disclosure statements require will answer a lot of questions, as the disclosure statements require CCRC's to explain their corporate structure, their relationships between the financial relations, and include the list of the Board of Directors and how to contact them.

- **Mr. Kent Phillips, Chief Financial Officer, Virginia Baptist Homes:** I would like to bring up the notion of a future service obligation. It is a relatively esoteric accounting concept that gets back to the idea of financial transparency, which is one of the goals. We are an insurance company, a real estate company, a hospitality company, and a health care company all under one roof. We are much more than anything that ties back to the fee-simple real estate, like time-shares and condominiums
 - All CCRC's must provide a disclosure statement every year, which includes the audit that contains an opinion rendered by a certified public accountant. The CPA uses the future notice obligation as a test, which is to stay in concert with sound actuarial data. We look a forward looking revenues, expenses, entrance fees, and debt service in perpetuity to determine if you have a surplus or deficit. To begin to define the notion of affordable stability, I would suggest you look at the future service obligation calculation. This gives a good measure for whether a CCRC is sustainable.
 - Ms. Pearson mentioned an amendment to this mechanism in order to determine how to classify entrance fees. That essentially is a non-cash issue and has to do with how refundable entrance fees are taken into operations. It has nothing to do with how the actual cash is used. It just tells a CPA of CFO when to put that money on the income statement.
- **Mr. Herring, Glebe Resident:** Could you describe the purpose of an entrance fee and can it be audited against that purpose?
 - **Mr. Phillips:** The entrance fee is a part of the payment stream that is put in place to cover a set of service that we are contracting to give a resident. One way to finance this cost of future care is to collect an entrance fee up front and have a relatively nominal monthly fee going forward. It can certainly be audited. That future service obligation is in place to capture all the revenues and expenses.
- **Mr. Herring:** there are many claims against that set of asset we are calling the entrance fee. It is used to cover future health care, and, thus, is a way recognized by the IRS of purchasing future health care services. This is a claimant against that set of assets. The second claimant is the proprietor, himself may have needs in terms of the operation of the facility for which the entrance fee can be used. The last piece of the claimant is the potential bond holder, who can claim an entrance fee as an asset in a bankruptcy. With this set of assets and strong claimants against those assets, then you do not have a way to control and maintain them the funds.
 - **Mr. Phillips:** The key issue to your question is bankruptcy, and how to know if I'm going to go into bankruptcy. The future service obligation is a

good indicator of financial stability, and there are other predictive measures in place to suggest that if you do not fix what is wrong now, you may be in default. If you do not fix that default, you will be in bankruptcy.

- Is there a difference in the accounting for life care versus the entry fee and fee for service type of obligation for a CCRC?
- **Mr. Phillips:** No, There are defined ways to handle specific entrance fee models that depend on whether the fee is refundable. The refundable portion is what the recent guidance has indicated that there some changed in the way you would have to treat that issue.
- **Mr. daCosta:** I just wanted to recognize the fact that in sixty year of business, the VHD has never denied a resident a service. This is a very important benchmark for all residents.
- **Mr. Meade Spotts, Virginia United Methodist Homes:** Emphasized financial assurance concerns and transparency and listed various state and federal organizations (SEC, BOI (financial aspects), DSS (assisted living component), Department of Health (nursing home component), Medicare, Medicaid with oversight over CCRCs, and regulatory requirements that apply. (HIPAA, fair housing, ADA, fire protection, zoning, building codes, for example).
 - He then described the contents of a typical disclosure statement as presented to a typical prospective resident, including the description of the provider, purpose of the corporation, governance information, real property owner description, affiliations, current fees and a history of increases, financial statements, pro forma income statements, admission practice, procedures for filing complaints, and pro forma residency agreement itself.
 - CCRC has accountability to provide services laid out in contract. He claimed that financial pitfalls cannot be predicted, and the effects of legislation cannot be predicted. Struggling CCRCs, such as Windsor Meade, may suffer financially due to poor timing. He described the difficulties of Windsor Meade in more detail (low occupancy, a lender who wanted out) as well as the role of the SEC. No one has been displaced and situation is improving.
 - The financial assurance concerns in Virginia have been addressed by the proactive nature of the legislation currently in place, and also in part by the operators in Virginia, including the VUMH. He mentioned the need for a simpler template for financial transparency, approved by the Bureau of Insurance, and pointed out that some people want more information than is currently provided in the financial disclosure. CCRCs don't want to create their own template, because they don't want to be accused of hiding

data. He summarized the choice factors for people who make educated decisions when selecting a CCRC.

- **Mr. Nelson:** There have been two presentations and a memo in the last 60 days, and “the natives are restless.” He discussed the need for improved communication.
- **Mr. daCosta:** What about the resident who is concerned about this workgroup and where it is going? He described unsolicited comments he received from another resident. Good management and good relations with the residents is most important.
- **Mr. Straub:** I would prefer less governmental control and more governmental guidelines. The industry needs to realize that the residents are the lifeblood of the industry, and treat them that way.
- **Sen. Barker:** We need to get a consensus on what issues we will move forward on. The issues we discussed were financial accountability and transparency, governance, and communication.
 - On the financial side, Ms. Palen and I met with people from the Bureau of Insurance and the State Corporation Commission to go over the financial issues and concerns. Legislation may not be required at this time. Bureau of Insurance has offered to do several things. First, create a simplified financial form (simple to understand and to put together); Second, create a way for multi-facility organizations to provide simplified information the fiscal condition of the overall organization as well as for the specific facility. Third, create a consumer information guide that is substantive but not overwhelming; fourth, send an administrative letter out to all facilities stressing the role of the Bureau of Insurance and State Corporation Commission and of their oversight responsibilities as well as the responsibilities of the facilities, particularly if there are material changes to information that has been submitted to the Bureau of Insurance. Then that needs to be communicated to the bureau quickly. This would be an ongoing process where drafts of the documents would be submitted to this committee for comments and revisions.
- **Mr. Staub:** I would like to get more distinct information without creating a burden to facilities. The financial side is quantifiable and generally adequate. Interaction between management and residents is qualitative. Procedures regarding finances are adequate, but our concerns are the problems with paternalism. That is the more challenging problem.
- **Sen. Barker:** I will report to commission that the Bureau of Insurance is working on those four documents. We are concerned with the issue of governance, especially resident representation on the Board of Governance. 60% of CCRCs

already have this in place, some voting, some not. The industry is also looking at this issue.

- Challenges include how you implement this when one corporate entity owns multiple facilities, and what other roles for residents exist on committees. I propose recommending that the chair of the Housing Commission write a letter to all CCRCs asking for information about how they are structured now in terms of residents serving on the board and committees, and encourage those that don't have residents on their boards to reconsider, requesting a response back early next year. This should allow us to better understand the issues and challenges of various organizations.

- **Mr. High:** I would like to know the details behind VANHA's suggestion that resident representation on boards is that high. VACRA has been not been successful discovering what goes on at each community. This subgroup will enable them to get the information. Management has input regarding what resident is on the board at his facility. There is a need for the ability to deal with a resident board member who becomes incapacitated during his or her term. I would like to see more information about ways different organizations handle the issue of residents on boards.

- **Sen. Barker:** This process should allow us to get this information.

- **Mr. High:** VACRA has discussed the concept of a committee or commission overlooking CCRCs, for gathering information. VACRA wants access to the information available to this committee, the housing commission, etc.
- **Mr. Nelson:** Would you consider sending a similar questionnaire to the president of the resident association to see if you get their view?

- **Sen. Barker:** We could send out a letter asking for input into the situation.

- **Mr. Rowe:** At Cedarfield, they are more focused on committees than the board. I hope this letter will include a request for information about committee structure.

- **Mr. Barker:** Yes, that is the intent, to get each organization's organization of board and committees.

- **Ms. Parson:** What is your long term goal, and do you think the Housing Commission is the appropriate entity to request it? Maybe I would volunteer my organization (VANHA) to obtain this information.

- **Sen. Barker:** The Housing Commission needs to have a role in this process, but we could work with your association.

- **Ms. Parsons:** It seems somewhat intrusive. What are you hoping to do with the information, long term?

- **Sen. Barker:** From this information, I plant to determine possible trends, and find opportunities for improvement. We can meet with you, Ms. Parson, between now and Wednesday to discuss further.

- **Mr. Straub:** VACRA would like also like to work with VANHA at the meeting.
- **Sen. Barker:** offered to be a facilitator at a meeting between VACRA and VANHA
- **Mr. Straub:** Communication and sharing of information is vital. I propose an annual meeting or conference between VACRA and VANHA for residents and others as both listeners and participants, as a way to bind the two organizations together in a common cause.
- **Sen. Barker:** I think this can happen after February.
- **Mr. Axelle:** We also need more communication within each facility.
 - **Mr. Barker:** Agreed. There are some facilities that seem to work very well, and others where there are perceptions of concern.

V. Public Comment

- **Jean Hurley, *Past president, current secretary of VACRA:*** thanked Mr. Barker for organizing this, called attention to a study in 1992 that made seven recommendations. One was for a consumer guide, and it never happened. Another was to create a state-level continuing care committee to meet with people who have a common interest. A 1993 study recommended again a continuing care committee. She expressed interest in beginning this 2012, and asked if this was a possibility.
 - **Sen. Barker:** We are taking recommendations on to the Housing Commission and then work with them to help us get additional information, and move on with that information in 2013. We'll be looking at the products from the Bureau of Insurance as well.
- **Warren Dixon, *Windsor Meade:*** Dr. Pearson, considering the refundable mortgage, I keep seeing on television commercials on refundable mortgages. Is there some way that our refundable payments could be paid back to us over a period of time in smaller amounts? It seems that this could be beneficial to both residents and CCRCs who would be refunding smaller amounts.
 - **Dr. Pearson:** It is possible. This not happen because the concept of refundable fees was a marketing decision to make CCRCs more attractive to prospective residents than life-care contracts alone. The industry may find other ways to market, but this would likely involve higher monthly fees as a result of earlier refundable entrance fees.
- **Mr. Dixon:** Greenspring gives 100% refunds upon the death or departure of a resident. Goodman House reduces the value of the initial deposit by 2% per month, so if you are not satisfied and leave, you get a partial refund. Second Question: Could we make a charitable contribution of the returnable portion of our investment to a charitable organization that has the ability to wait for our passing or whatever comes next?

- **Mr. Barker:** That is certainly a possible option, I would think, in certain situations.
- **Bob Spensky, Windsor Meade resident:** I am frustrated with the lack of trust and communication at Windsor Meade. We have tried to get a resident on the board, because they do not feel they are being heard, and are unable to meet with the board. I ask for an intervention (through a law or otherwise) to require a resident on the board, because the residents have been told by the management that this will not happen.
 - **Jean Bozeman, Harbor's Edge:** This has been a great revelation for us. We appreciate this forum, and knowing that we are not alone. Please keep this going.

VI. Adjourn

- Upon hearing no further comment, the meeting was adjourned at 12:45 PM.